IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2265 OF 1999

SHRI CHAITANYA D. MEHTA,
Occupation - Solicitor, having
his office at 13/A/B, Ismail Bldg,
3rd Floor, 381, Dr. D.N. Road,
Fort, Mumbai - 400 001. ...Applicant.

V/s

1. MR. H.V. NIKAM,
Sales Tax Officer (E-203)
Enforcement Branch, having
his office at 5th Floor,
Vikrikar Bhavan, Mazgaon,
Mumbai - 400 010.

2. STATE OF MAHARASHTRA ...Respondents.

Shri Shirish Gupte with shri Subodh Desai for the applicant.

Ms. Rajeshree Gadhavi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 12th January, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the applicant and the learned APP for the State. None appears for respondent No.1 though he is served.

2. The applicant is challenging the complaint which is filed under section 405, 406 and 409 of the Indian Penal Code before the P.I. Sales Tax Cell, Mazgaon.

It is submitted by the learned Counsel appearing on behalf of the applicant that the applicant resigned from the Company on 20/8/1996 and that his resignation was accepted in the meeting of the Board of Directors and that the Company had submitted Form No.32 to the Registrar of the Companies. The certified true copy of Form No.32 is annexed to the application.

3. It is alleged in the complaint that the Managing Director of M/s Indo Bio-Tech Foods Ltd. did not disclose the proper turn over which was liable to tax and the taxes payable thereon in the return of the Company and had collected the taxes to the tune of Rs 9,36,893/- as an agent of the State of Maharashtra and had not deposited the said amount in the Government treasury. In the complaint, it is alleged that Shri Dilip Dahanukar who was the Managing Director of the Company and was in charge of the day-to-day affairs of the Company did not disclose this fact.

4. Further, the application for discharge was filed by the remaining three accused and their application was allowed by the Metropolitan Magistrate 25th Court and the said three accused were discharged. The present applicant therefore was not concerned with the said complaint, firstly, because he had resigned and,

secondly, he had never participated in the day-to-day management of the Company.

5. In the result, the Criminal Application is allowed. The complaint dated 16th October, 1998 lodged by the 1st Respondent with P.I. Sales Tax Cell, Mazgaon is quashed and set aside qua the applicant.

6. Criminal Application is allowed in the above terms.

V.M. KANADE, J.